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SUBJECT: PALACE PLANS TO GAZETTE MEDIA LAW BUT OTHERS
LIKELY TO DISPUTE PROCESS

REF: A. KABUL 1043
[1](#)B. KABUL 913
[1](#)C. 08KABUL 2478

[1](#)1. (U) SUMMARY. The Supreme Court statement (ref A) siding with President Karzai over the Parliament on the media law is not yet public, but word is leaking out. Palace Chief of Staff Daudzai told us Karzai would gazette the law, minus the disputed provision, rather than return the law to Parliament.

A/DCM urged Daudzai to gazette the law quickly, to help strengthen public confidence in a level electoral playing field. Distracted by civilian casualties and election issues, MPs have not yet addressed the issue, but we suspect they would protest a direct gazetting. Journalists and media NGO representatives objected to the Court's action, but supported the law overall as an improvement over the current situation (i.e., no media law). A translation of the Supreme Court's letter to Karzai follows. End Summary.

Palace on Next Steps

[1](#)2. (SBU) Palace Chief of Staff Daudzai told Acting DCM on April 28 that Karzai would order the Ministry of Justice to publish the law in the gazette, minus the provision ruled unconstitutional by the Supreme Court. A/DCM urged prompt action to help strengthen public confidence in a level electoral playing field. Action prior to Karzai's Washington visit would be a signal of Karzai's commitment to this principle. Daudzai said the Palace would try, but made no firm commitment.

[1](#)3. (U) Word of the Court's opinion has been slow to reach the Cabinet. A contact at the Office of Administrative Affairs (OAA) had not seen the Court's decision as of April 28, and neither the Palace nor any Justice Ministry officials had contacted OAA with instructions on whether to send the law back to Parliament or to prepare the legislation for publication in the gazette. As there was no precedent for such a constitutional review by the Supreme Court in between legislative passage and publication by the executive, the OAA contact did not know what path forward seemed more likely.

Parliament Quiet For Now

[1](#)4. (SBU) However, Qanooni told the Charge on April 29 that Parliament still expected to vote on any legislation before it became law. Qanooni pointed to the dispute over the Shia Family Law, which Karzai has promised to review for constitutionality and then send back to Parliament, as a precedent for having Parliament vote on the final text of the media law. Qanooni requested U.S. assistance in convincing Karzai to win parliamentary approval for any changes to the law.

[1](#)5. (U) Notwithstanding Qanooni's views, the Court's letter has yet to become a prominent issue on Parliament's agenda: civilian casualties and election talk are dominating the

attention of the MPs. MPs who supported the media law dismissed the Court's authority to issue such an opinion, but admitted Parliament has few options to re-insert the provision regarding the RTA chief's confirmation back into legislation. Lower House MP Mir Ahmed Joyenda (Kabul, Hazara) said pro-media freedom MPs are discouraged by the double defeat of the Court's decision and last week's failed impeachment of Information Minister Abdul Karim Khoram, who had blocked enforcement of the media law (ref B).

Journalists and Media NGO Opposition to Supreme Court Statement

¶6. (U) During an April 26 Norwegian Embassy-hosted freedom of expression discussion, Afghan journalists and media NGO representatives strongly opposed the Supreme Court statement.

Participants speculated the law would return to Parliament for additional debate and urged the international community to lobby MPs to oppose Karzai's change. Open Society Institute's Abdul Hajeab declared that private media companies' market share dwarfed RTA's, but RTA was still influential. Allowing Karzai to control its leadership essentially converts RTA into a full-time propaganda outlet for Karzai's re-election campaign, a Pahjwok journalist claimed. Participants doubted that Parliament would succeed in reversing Karzai's revision.

¶7. (U) The journalists and NGO representatives praised the media law overall, and asked the international community to work with Afghan media advocates to pressure the government

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to implement the law. Although the law contained some problematic articles, such as those prohibiting speech offensive to Islam (ref C), it was a huge improvement over the current situation of no enforced media law. Especially during the election season, it is dangerous to have no legal apparatus to adjudicate media disputes, Afghan Independent Human Rights Commission representative Musa Mahmodi said.

Comment

¶8. (U) We will continue to push for rapid enactment and implementation of the media law, as well as our advocacy efforts in support of freedom of expression. As public comments in certain particularly sensitive cases could be counterproductive, we will continue to consult closely with Afghan and international partners to ensure effective but vigorous engagement on this crucial issue.

Supreme Court Statement Translation

BEGIN TEXT:

¶1. An Embassy translation of the Supreme Court's April 25 letter to Karzai follows:

Regarding the Media and Law and the Independent Commission for the Supervision and Implementation of the Constitution

To: H.E. President of the Islamic Republic of Afghanistan

The Office of the President of the Islamic Republic of Afghanistan, through letter No. 17, dated 03/15/2009, (asked) the Supreme Court to assess the Media Law and the Law on the Monitoring Commission for the Implementation of the Constitution. The Supreme Court has completed its review and states the following:

The issue of the National Assembly's endorsement of the RTA Director is not included in paragraph 11 and 12 of Article 64 of the Constitution, and any addition to the Constitution is considered an amendment, which is solely in the power of a

Loya Jirga.

Thus, the provision of Article 13 of the Media Law requiring that the RTA director obtain a vote of confidence is unconstitutional.

Article 8 of the law for the Independent Commission for the Supervision and Implementation of the Constitution (which was passed by Parliament) required that the interpretation of the Constitution is under the jurisdiction of this Commission.

In this regard, the Supreme Court's authority is explained by Article 121 of the Constitution, which states that the interpretation of the Constitution is under the jurisdiction of the Supreme Court. Therefore, the High Council of the Supreme Court considers the above (Article 13 of the Media Law and Article 8 of the Independent Commission for the Supervision and Implementation of the Constitution Law) as contradictory to the Constitution of Afghanistan and orders that the above matters are non-enforceable.

This is the end of the report; execution will be according to your order. END TEXT.

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